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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.217 OF 2003

Vilas Sahebrao @ Sahebu Satpute ... Appellant

V/s.

The State of Maharashtra ... Respondent

Mr.Nitin Pradhan with Shubhada Khot & Maheen Pradhan for Appellant
Mr.P.S. Hingorani, APP, for Respondent

CORAM: **D.G. DESHPANDE & SMT.NISHITA MHATRE, JJ.**

DATED: **JUNE 20, 2007**

P.C.:

. Heard the learned Advocate for the accused and the learned APP. The accused has challenged his conviction under section 302 of the Indian Penal Code by which he is sentenced to imprisonment for life.

2. The conviction is based on three dying declarations. One is made to the daughter of the victim on the next day of the incident. Second dying declaration at Exhibit 63 was recorded by the police and the third dying declaration is recorded by Special Judicial Magistrate. Insofar as the dying declaration recorded by the police is concerned, there is no endorsement of the Doctor that the deceased was in a position to give the declaration, particularly in view of the fact that she had suffered 98% burns. The oral declaration made by the deceased to her daughter is on

the next day. The third dying declaration recorded by the SJM is challenged by the defence on the ground that neither the SJM nor the police officer gave oral evidence about the contents of the document. We find this submission to be supported by evidence. But we are not inclined to give any benefit of circumstances to the accused. If the SJM was examined in Court, it was for the Prosecutor and the Court to see that the SJM is questioned about the contents of the dying declaration and those contents are brought on record. A serious lapse has occurred both on the part of the Prosecution and the Court. Both were not at all diligent in discharging their legal duties. Therefore, this is case not of acquittal and giving benefit to the accused but the case requiring remand of the matter. Hence, the following order is passed:

ORDER

(i) The judgment of conviction and sentence of the accused is set aside.

(ii) The matter is remanded to the trial Court. The trial Court will examine again the Special Judicial Magistrate, PW11, to prove the contents of the dying declaration recorded by him and if necessary, examine the Doctor as well as the police officer concerned connected with the said

declaration. The accused shall not be released on bail.

(iii) Needless to say that full opportunity of cross-examination will be given to the accused and the arguments will be heard and the case will be decided on merits.

3. Appeal disposed of accordingly.

(D.G. DESHPANDE, J.)

(SMT.NISHITA MHATRE, J.)